

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3448 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G H SHAH

Versus

STATE OF GUJARAT

Appearance:

Mrs. Mamta R VYAS for Ms. Daxa R Vyas for Petitioners
Ms. Harsha Devani, Ld. AGP for Respondent No. 1 & 2
MR JJ YAJNIK for Respondent No. 3, 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 16/07/1999

ORAL JUDGEMENT

The petitioners in substance and in reality challenged their seniority in the seniority list. All the five petitioners at all the relevant times were working as the Assistants in Legal branch of the Legal Department of the State of Gujarat. They came to be recruited as such on they being selected by GPSC, the

Respondent no.2 in the petition. After their selection and appointment they have undergone requisite training and also had passed requisite departmental examination. According to them, they are, therefore regularly appointed Assistants in the Legal Department. The say of the petitioners further is that, though the petitioner no. 1 to 4 came to be appointed in the above said manner on March 25, 1985 and the petitioner no. 5 came to be appointed in January 1984; the Respondent no.3 & 4 have been placed as their seniors. According to the petitioners, the said respondents came to be appointed on January 12, 1982 and February 04, 1982 respectively. They have been inducted in the Legal department without following the requirements of the law and the Recruitment Rules. The allegation against the said respondents is that, they had not undergone the requisite training and had not passed requisite examination. Despite this, under a so called Circular dated July 04, 1986 a provisional seniority list has been prepared which shows that the above said respondents no.3 & 4 would be senior to the petitioners.

According to the petitioners indeed favour has been shown to the said respondents for becoming senior to the petitioners as per the seniority list under challenge. It is in the background of these facts all the petitioners have prayed for an appropriate writ, or direction asking the Respondent No.1 State to modify the seniority list Annexure-1, after quashing the orders. notifications of the Respondent No.1 Government under which the above said benefits have been given to Respondents no.3 & 4.

The case of the petitioners has been challenged by the Respondent by filing a detailed affidavit in reply. It has been inter alia contended in the affidavit in reply filed by the Dy. Secretary, Legal department, Mr. Kothare at para-4 thereof thus:-

" 4. With reference to paragraph 3 of the petition, I say that the appointments of Respondents No.3 and 4 have been regularised with effect from 12.1.1982 and 4.2.1982 respectively vide Government Officer Order No. LOM/1081/16/D/F. dated 24.4.1986, after consultation with G.P.S.C. as per provisions contained in Rule 16 (ii) and 16 (iii) of the Gujarat Civil Services Classification and Recruitment (General) Rules 1967. They were also exempted from appearing in pre-service training

examination taking into consideration their overall long experience and efficiency vide Government office order No. LOM/1081/16/D/F ddated 23.7.1986. I deny that the appointments of Respondents Nos. 3 and 4 are irregular and illegal. "

Ld. counsel Mrs. Mamta Vays who appears on behalf of the petitioners places reliance upon a decision of this Court in D.D. Upadaya and others Vs. State of Gujarat & Others, 33 (3) G L R, pg. 2264 and urges that the case of the present petitioners is duly covered under the said decision. The said decision has been referred in detail by me with the assistance of Ld. counsel for the petitioner and Ld. Govt. counsel Ms. Harsha Devani. Upon this exercise is being done, it appears that the case of the present petitioners before me is fully covered under the aforesaid decision.

This petition therefore requires to be allowed and the same is hereby accordingly allowed.

As a sequel to this, the orders and notification under which the benefits came to be conferred upon Respondent no.3 & 4, namely Annexure-1 to the petition dated April 24, 1986 is hereby quashed and set aside. The respondents are directed to prepare a fresh seniority list by placing the petitioners at appropriate place but before and above the Respondents No.3 & 4. The petitioners because of this position now shall be entitled to be considered for the promotion to the next higher post as per their seniority. They would also be entitled to all other consequential benefits flowing from these orders. Petition succeeds to the above said extent. Rule is made absolute accordingly. No costs.

/vgn.